EUCO INTERNATIONAL SDN. BHD. v. P.F. CHEN

[F.C. (Salleh Abas L.P, Wan Suleiman & Seah F. JJ.) July 9, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 181 of 1982]

Practice and Procedure – Application for leave to appeal to Yang di-Pertuan Agong – Appeal substantially or in essence involving facts – Leave refused.

In this case the appellants applied for conditional leave to appeal to the Yang di-Pertuan Agong from the decision of the Federal Court which ruled that the appellants were bound to indemnify the respondent who was an employee of the appellant's subsidiary for a guarantee which he gave to the Malayan Banking for providing overdraft facilities to the appellant's subsidiary – see [1984] 2 M.L.J. 61.

Held: the intended appeal was one which substantially or in essence involved factual grounds and therefore the application must be dismissed.

FEDERAL COURT.

G.S. Nijar for the appellants/applicants.

Raja Abdul Aziz Addruse for the respondent.

Salleh Abas L.P. (delivering the Judgment of the Court) : This is an application by the appellants for a conditional leave to appeal to His Majesty the Yang di-Pertuan Agong from the decision of this Court delivered on April 13, 1984.

Both the High Court and this Court have ruled that the appellants were bound to indemnify the respondent, who was an employee of the appellants' subsidiary, for a guarantee which he gave to the Malayan Banking for providing overdraft facilities to the appellants' subsidiary. The decision of both courts is based on the facts of oral assurance and documentary evidence showing that the appellants (the parent company) had in fact agreed to indemnify the respondent. In our view the intended appeal is one which substantially or in essence involves factual grounds. Hence we dismissed the application with costs.

Application dismissed.

Solicitors : *Abdul Aziz Ong & Co.; Rithauddeen & Aziz.*

POH SWEE SIANG v. TRUSTEES OF TONG KHOO KONGSI & ORS.

[F.C. (Salleh Abas L.P., Wan Suleiman & Seah F.JJ.) July 17 & 18, August 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 139 of 1984]

Practice and Procedure – Interlocutory injunction – Discharged for alleged non-disclosure of facts – Appeal – Function of appellate court – Misapprehension of facts by judge – Interlocutory injunction restored.

In this case the appellant had brought an action against the respondents asking for an injunction to restrain the respondents from entering on his land and for damages for trespass. The appellant, by way of *ex parte* summons, obtained an interlocutory injunction to restrain the respondents as prayed in the claim. Subsequently the respondents applied to set aside the order and the Judge of the High Court discharged the interlocutory injunction on the ground that there had been failure to disclose material facts. The appellant appealed.

Held: on review of the facts the Federal Court was satisfied that the learned judge had misapprehended the facts which led him to a conclusion contrary to the affidavit evidence lodged by the appellant in support of his application for the *ex parte* interlocutory injunction. The interlocutory injunction must therefore be restored.

Cases referred to:

(1) *Cheng Hay Gun & Ors.* v. *Perumahan Farlim (Penang) Sdn. Bhd.* [1983] 1 M.L.J. 248.

(2) *Hadmor Productions* v. *Hamilton* [1983] 1 A.C. 191, 220; [1982] 1 All E.R. 1042, 1046.

(3) *Lian Keow Sdn. Bhd.* v. *Overseas Credit Finance Bhd.* [1982] 2 M.L.J. 162.

FEDERAL COURT.

Gurdial Singh Nijar (*Mohideen Abdul Kader and Miss R. Meenakshi* with him) for the appellant.

C. Abraham (*J.A. Yeoh* with him) for the respondents.

Cur. Adv. Vult.

Seah F.J. (delivering the Judgment of the Court): On July 18, 1984 after hearing arguments of learned counsel for both the appellant and the respondents we allowed the appeal with costs. We indicated that we would give our reasons at a later date which we do now.

On January 10, 1984 the appellant/plaintiff, Poh Swee Siang took out a writ in the High Court at Penang against the 1st respondent/defendant, Trustees of Leong San Tong Khoo Kongsi (Penang) Registered, the 2nd respondent/defendant, Peru-